

MARICOPA COUNTY SUPERIOR COURT

FAMILY COURT DEPARTMENT

Welcome to the Family Court Department of the Superior Court of Arizona. This pamphlet is intended to give you an overview of Family Court and the services we provide. While you may not be here under the happiest of circumstances, we will do our best to treat you with courtesy and respect. In turn, we will expect the same from you. As a department, our priorities or core values are:

1. Ensuring that children are adequately supported financially and emotionally, including regular and meaningful time with both parents when possible and appropriate; and
2. Preventing domestic violence and protecting the victims of domestic violence; and
3. Processing our cases fairly and efficiently, using non-adversarial means to the extent possible and appropriate.

FAMILY COURT CASES

The Family Court Department deals with many different types of cases. All cases begin with the filing of a petition. We have informally divided petitions into two broad categories that we call “pre-decree” and “post-decree.” You will understand the court process better if you understand the difference between these two categories of petitions since they are handled differently by the court. “Pre-decree” petitions are those filed **before** a Decree of Dissolution of Marriage, Legal Separation or Annulment, or Judgment of Paternity is entered or any other final decree of judgment. “Post-decree” petitions are those filed **after** a Decree of Dissolution of Marriage, Legal Separation or Annulment, or Judgment of Paternity or any other final decree of judgment is entered, and are usually filed to modify or enforce existing orders of the Court.

I. PRE-DECREE PETITIONS

“Pre-decree” petitions include petitions for “*Dissolution of Marriage*” (previously called “divorce”), “*Legal Separation*,” “*Paternity*,” “*Annulment*,” “*In Loco Parentis Custody*” (“in loco parentis” is Latin for “in place of the parent”), and “*Conciliation*.” The petition is filed with the Clerk of the Court together with a filing fee prescribed by state law. The person who files the initial petition in a case is called the “Petitioner.” The person against whom the initial petition is filed is called the “Respondent.” These names apply throughout the history of a case even though at some future time the Respondent may file his or her own petition for relief. Since the vast majority of these petitions are petitions for “Dissolution of Marriage” this pamphlet will deal primarily with them. Information about other types of petitions is available at the Court’s Self-Service Center, which is described below.

MEDIATION and ALTERNATIVE DISPUTE RESOLUTION

Mediation is an excellent way for people to try to resolve their disputes. Mediation is a confidential process in which a mediator helps the parties reach an agreement on their own. Mediation screening is required in all cases when there is a dispute about child custody or parenting time (formerly known as "visitation"). Mediation may be done privately or through the Conciliation Services department of the court. Mediation through Conciliation Services is available only for disputes involving child custody or parenting time, while private mediation may be used for all disputes. Either party may request mediation at any time.

Cases are generally referred to an ADR procedure by the Superior Court Judge. Under the newly amended Arizona Rules of Civil Procedure Rule 16(g)(1), the Court may direct parties in any action to submit their dispute to a court authorized ADR program. Rule 16 (g)(2) states that parties to disputes have a duty to consider ADR, confer with one another about using an ADR process, and report the outcome of their conference to the court. Parties may request that a Judge refer their case to ADR at any time.

Another type of mediation petition is a post-decree petition for after a case is a final Order in the Court. It is a **"Petition for Post –Decree Mediation"** for disputes involving child custody or parenting time. Although the petition is filed with the court, no judge is involved. The petition is referred directly to Family Court Conciliation Services, which will attempt to mediate the dispute between the parties.

FILING AND SERVICE OF PETITION; PARENT INFORMATION PROGRAM; DEFAULTS

After a **"Petition for Dissolution of Marriage"** is filed, the Petitioner must serve the Respondent with a **copy** of the petition within 120 days. Alternatively, a Respondent may sign an **"Acceptance of Service"** form. Generally, if the Respondent lives in Arizona, he or she must be personally served by a registered process server. If the Respondent lives out-of-state, he or she may be served by certified or registered mail, return-receipt requested. After service of the petition, the Respondent must file a response within **20** days if he or she lives in Arizona. If the Respondent lives outside of Arizona, he or she would have **30** days to file a response. If no response is filed the Petitioner may seek a **"Default Decree of Dissolution of Marriage"**. To schedule a default hearing call 602-372-3332 or schedule your hearing at <http://ecourt.maricopa.gov/dod>. . Keep in mind, however, that **Arizona law provides for a waiting period for all dissolutions**. No hearing may be held or dissolution granted before 60 days after service of the petition or acceptance of service of the petition. Also, in cases involving children, both parties are required to attend a Parent Information Program which helps parents understand that ongoing parental conflict may be harmful to children. It is a half-day course offered at locations throughout the county. In some cases, this requirement may be waived by the court, if a party is unable and/or refuses to attend. However, the non-complying party would not be entitled to any relief from the court until he or she completes the program and may also be held in contempt of court.

PRELIMINARY INJUNCTION

A ***“Preliminary Injunction”*** is issued by the Court automatically when a petition for dissolution of marriage is filed. **It is very important and applies to both parties.** Generally, it prohibits the parties from removing minor children from the state, harassing each other, changing any insurance coverage of the parties or their minor children and disposing of joint, common or community property except for necessities of life or in the usual course of business.

TEMPORARY ORDERS

After a ***“Petition for Dissolution of Marriage”*** ***“Petition for Legal Separation or Annulment,”*** or ***“Petition for Paternity”*** is filed, either party may file and serve a petition for temporary orders for child custody, parenting time, child support, spousal maintenance/ support or attorney’s fees.

EARLY RESOLUTION CONFERENCE

When an Answer to the Petition is filed in a Family Court case with self-represented litigants, an Early Resolution Conference (ERC) is set before an Attorney Case Manager. The goals of the conference are to fully resolve as many issues in the case as possible, manage the case by setting the next event, usually a trial, and inform you of available court resources.

An ERC will be set in cases involving dissolution of marriage (divorce), legal separation, paternity or grandparent’s visitation where an Answer (sometimes called a “Response”) has been filed and 60 days have passed since service of process. The process does not include post – decree cases or cases that have 2 or more attorneys at the time the ERC is scheduled.

CONSENT DECREES

At any time after the 60-day waiting period described above, the parties may resolve their disputes and submit to the court a ***“Consent Decree of Dissolution of Marriage.”*** If the forms are completed fully and accurately, a court hearing may be avoided entirely. If the consent decree is approved, a judge, commissioner, or family court officer will sign the decree and send you a copy. If there are mistakes with the paperwork that are substantial, the paperwork may be rejected and returned for corrections.

You can either mail your paperwork to court or schedule a time to have your consent decree signed. If you want your consent decree signed at a hearing, you can schedule your own hearing date by going to <http://ecourt.maricopa.gov/dod> or by calling 602-372-3332.

PRETRIAL CONFERENCE AND TRIAL

Every contested case is assigned to a judge of the Superior Court. If the case does not settle on its own or at the ERC conference, the assigned judge will usually set a pretrial conference or a Resolution Management conference. A trial may be set upon the request of the Attorney case manager or upon the filing by a party of a proper ***“Motion to Set and Certificate of Readiness”*** under Rule 38.1 of the Arizona Rules of Civil Procedure.

The purpose of the pretrial conference is to further narrow the issues and set the case for trial. At the trial, the judge will hear evidence presented by the parties and make a final decision in the case. The decision may be made orally in open court, or the judge may take the matter under advisement and issue a written decision. The judge's final decision should address all issues of child custody, parenting time, child support, spousal maintenance/support, disposition of community property, and attorneys' fees. In deciding who should pay attorneys' fees, the judge will consider the relative resources of the parties, as well as the positions of the parties during the litigation. If a party is found by the judge to have been unreasonable in their positions, they may be required to pay all or part of the other party's attorney's fees. If a party disagrees with the judge's decision, he or she may file an appeal in the Arizona Court of Appeals within 30 days after entry of the final judgment.

Beginning August 21, 1998, Arizona law was changed to provide that property acquired after service of the petition is the separate property of the party who acquired it. The law also says that both parties must sign for debts incurred after the date of service for the community to be bound.

WARNING: In your ***"Property Settlement Agreement"*** or ***"Decree of Dissolution (divorce), Legal Separation, or Annulment,"*** responsibility for your community debts may be assigned to one spouse or the other. Such an order or agreement would be binding on the **spouses only**. This would **not** necessarily relieve either spouse from responsibility for community debts. Those debts are matters of contract between you and your creditors (For example: banks, credit unions, credit card issuers, finance companies, utility companies, medical providers, retailers, etc.). Since your creditors are not parties in your court case, they would not be bound by orders or agreements in your court case. You may want to contact your creditors to discuss your debts as well as the possible effects of your court case on your debts. You should also be aware that in 2000, the Arizona Legislature passed a law that may give you more rights and options with respect to community debts. See A.R.S. § 25-318.

II. POST-DECREE PETITIONS

"Post-decree petitions" are those filed **after** the final decree or judgment and must also be accompanied by a filing fee. They are usually filed to modify child custody, parenting time, or support; or to enforce parenting time or support orders. There are a few rules to keep in mind before filing a post-decree petition. Generally, petitions to change custody may not be filed less than one year after the prior order unless the child's physical, mental, moral, or emotional health is in serious danger. Similarly, petitions to change child support should not be filed unless the new amount would be at least 15% more or less than the current amount.

Post-decree petitions are also called ***"Petitions for Order to Show Cause."*** When such petitions are presented to the court, an ***"Order to Show Cause"*** or ***"Order to Appear"*** is issued by the court and directs the other party to appear and show cause why the relief sought should not be granted. The first hearing is usually called a Return hearing and is set for 15 minutes. The purpose of the Return hearing is to narrow the issues and determine whether there is sufficient basis to set a longer hearing at which evidence would be presented by the parties. If the judge decides that an evidentiary hearing is required, one will be set. After the evidentiary hearing the judge will make a final decision on the issues presented.

SIMPLIFIED MODIFICATION OF CHILD SUPPORT

The “**Arizona Child Support Guidelines**” provide for a simplified modification procedure that is quicker and may not require the parties to see a judge. This is called the Simplified Modification procedure. Forms and instructions are available at the Self-Service Center.

SUPPORT OR PARENTING TIME ENFORCEMENT/EXPEDITED SERVICES

There is also a quicker way to seek enforcement of support or parenting time orders. Enforcement requests may be filed at the Clerk of the Court. Once proof of service has been filed, as well, Expedited Services will expedite a party's request, a conference will be conducted with the parties, and recommendations will be made to the judge about the issues raised.

CHILD SUPPORT ASSISTANCE

If you are a parent who is seeking child support for the minor child(ren) common to both you and your spouse, the Division of Child Support Enforcement of the Arizona Department of Economic Security may also be of assistance. They can help with locating a non-custodial parent, establishing paternity, establishing the financial obligation of the non-custodial parent, modifying the support obligation, and enforcing support orders. They can help whether the non-custodial parent lives in Arizona or another state. The location of the nearest office may be found in the blue pages of your telephone directory under State Child Support Services. Their phone number is 602-252-4045. The website is: <http://www.de.state.az.us/dcse>

ORDERS OF PROTECTION

A petition for “**Order of Protection**” may be filed in cases of domestic violence either pre-decree or post-decree. Generally, the petition may be filed in any Justice Court, Municipal Court or Superior Court. However, if there is a dissolution of marriage, legal separation, annulment, maternity, or paternity action between the parties pending in the Superior Court, the petition should be filed in the Superior Court under the dissolution case number.

A petition for “**Order of Protection**” must be made in writing and under oath. The plaintiff will meet with a judicial officer who will grant or deny the petition, or set it for a hearing. An order may be granted if the court finds there is reasonable evidence to believe that the defendant may commit an act of domestic violence, the defendant has committed an act of domestic violence within the last year, or other good cause exists to issue the order. After the order is signed, it must be personally served on the defendant within one year. The order is not effective until it is served. Service may be done by a registered process server or by the Maricopa County Sheriff's Office. The order is only in effect for one year after service and may be renewed. After the order is served on the defendant, the defendant may request a hearing at anytime within that year. At the time of the request, the hearing date must be set within 10 days (or 5 days if the plaintiff is granted exclusive use of the home.)

SELF-SERVICE CENTER

The Court's Self-Service Center is a department in the courthouse where forms and instructions are available for almost every family court matter. It is a great resource for the community. The Self-Service Center is located in the Courthouse in downtown Phoenix, at the Southeast court facility in Mesa, and the Northwest court facility in Surprise. It has an automated telephone system which provides general information by dialing 602-506-SELF(7353)

There are also, at each location, lists of Attorneys and Mediators who you can contact to schedule appointments to answer specific questions concerning your case. You may also visit the Self Service Center website to view and/or obtain forms and instructions at:

www.superiorcourt.maricopa.gov/ssc/sschome.html.

FAMILY COURT NAVIGATOR

The Navigator is a key component of Family Court and works closely with litigants to answer questions, provide information about Family Court processes and procedures in a non-adversarial manner and in responding to public inquiries, can provide and recommend possible solutions. The Family Court Navigator can review case process, assist customers in finding their way through the Court system, identify customer options, refer customers to appropriate resources and help citizens resolve problems. Customers can reach the Navigator by email at: navigator@superiorcourt.maricopa.gov or by calling 602-506-0219.

LEGAL RESOURCES

The Family Lawyers Assistance Program (F.L.A.P.) can arrange for 30-minute consultations with volunteer attorneys for people who are representing themselves in Family Court Cases. Consultations can be free for people who financially qualify or no more than \$35.00. They can be reached by calling 602-506-7948.

CONCLUSION

We hope this handout has been helpful to you. Please keep in mind that this is intended to give only an overview of the Family Court Department, and is not intended to provide legal advice about a particular case. For legal assistance, you may seek the advice of a lawyer or do some family law research on your own. Most family laws are found in Title 25 of the Arizona Revised Statutes. Also, you should be aware that family law cases generally are governed by the Arizona Rules of Civil Procedure and Rule 6 of the Local Rules of Practice for the Superior Court in Maricopa County. All of these laws and rules may be found in the courthouse library or your local public library.